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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*R. Barger
Proct*

FILE: B-188666

DATE: April 6, 1977

MATTER OF: Union Center Venture

DIGEST:

1. Protest against issuance of addendum to solicitation calling for submission of second best and final offer which is filed after amended closing date for receipt of proposals is untimely and will not be considered.
2. Agency refusal to consider late best and final offer under regulatory provisions which permit acceptance of late modifications where proposal is otherwise successful is not subject to objection where agency does not regard proposal as successful.

The Union Center Venture (Union) protests a second request for best and final offers by Region 6 of the Public Buildings Service, General Services Administration (GSA), under solicitation No. NEG-SMD-231, dated February 25, 1977. Union also protests GSA's refusal to consider its late proposal submitted in response to the request.

Best and final offers were originally requested on February 11, 1977. Union timely responded thereto. On February 25, 1977, GSA, by Addendum No. 2, reopened negotiations, modified the solicitation in certain respects, and again called for best and final offers, with a closing date of March 9, 1977. Union's reply to Addendum No. 2 was received by GSA on March 14, 1977.

Union's protest against the issuance of Addendum No. 2 is untimely under Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), which states in pertinent part:

"* * * In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation."

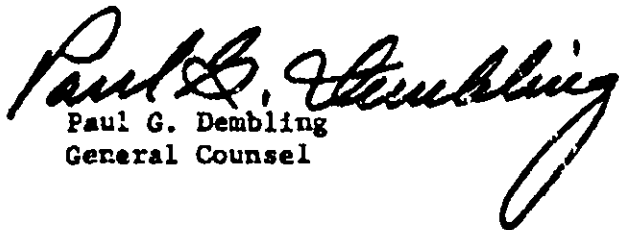
This matter, to be considered timely, therefore should have been protested not later than March 9, 1977, the next closing date for receipt of proposals. Union's protest, however, was not filed until March 24, 1977. The protest on this issue therefore is untimely and will not be considered.

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With regard to Union's late proposal, the applicable regulations provide that a modification resulting from a call for best and final offers received after the time and date specified will not be considered unless it is received prior to award and the late receipt is due solely to mishandling by the Government. See Federal Procurement Regulations 1-3.802-1(a). Union asserts, however, that its best and final offer should be considered under the provision of that section which states that:

"a late modification of an otherwise successful proposal which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted."

However, we have been advised by GSA that Union's original best and final proposal was not regarded as being a "successful" proposal, that award was made on March 14, 1977, to another offeror, and that Union's late offer has been returned to it. Accordingly, we perceive no basis for viewing GSA's refusal to consider Union's late offer as improper and, under the circumstances, see no purpose for further considering this matter.


Paul G. Dembling
General Counsel